IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9502 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

CHAMPABEN GOVINDAJI THAKORE - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner(s) : 1,
MR DJ BHATT for Respondent(s) : 1,
MR SB BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 04/10/2005

CAV JUDGMENT

1.By filing this petition under Article 226 and 227 of the Constitution of India, the petitioner has prayed to

issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the order dated 20.11.1999 passed by the Presiding Officer, Labour Court, Kalol in Reference (LCK) No.26 of 1995.

2.It appears from the record that respondent was working as Assistant Cook with the petitioner institution and she was being paid the salary of Rs.580/- per month. It appears from the record that the services of the respondent have been terminated orally by the institution from 18.01.1994 and that another person has been employed in place of the respondent. Ultimately, the respondent raised the industrial dispute which was numbered as Reference (LCK) No.26 of 1995. The Labour Court, Kalol, by its judgment and award dated 20.11.1999 allowed the reference and directed the petitioner to reinstate the respondent in service and also directed the petitioner to pay the back wages for the intervening period. Being aggrieved and dissatisfied with the said judgment and award dated 20.11.1999 passed by the Labour Court, Kalol, the petitioner had preferred the present petition under Article 226/277 of the Constitution of India.

3.It is the contention of the learned A.G.P., appearing on behalf of the petitioner that the impugned judgment

and award passed by the Labour Court is without appreciating the facts of the case and therefore, the same is unjust and without jurisdiction. It is submitted that the respondent was appointed purely on adhoc basis and with a condition that her services will be terminated at any time and, therefore, the Labour Court ought not to have passed the impugned judgment and award. In support of her submission, she has relied upon the following decisions.:

(i) General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137.

(ii) Ram Ashrey Singh and another Vs. Ram Bux Singh and others, reported in 2003(2) LLJ 176.

4. It is therefore, requested to allow the present petition.

5. On the other-hand, Mr.D.J.Bhatt, learned advocate appearing for the respondent workman has opposed this petition and has also filed the affidavit-in-reply. It is submitted that this is a petition under Article 227 of the Constitution of India, and, therefore, this Court may not interfere with the judgment and award passed by the Labour Court. It is submitted that the Labour Court has recorded the finding that the respondent workman had completed 240 days in a

preceding year before termination, and, therefore, termination of the respondent workman is in complete contravention of Section 25-F of the Industrial Disputes Act, 1947 and it is rightly held by the Labour Court that the termination of the respondent workman is illegal. In support of his submission, Mr.Bhatt has relied upon the following decisions.:

(i)S.M.Nilajkar and others Vs. Telecom District Manager, Karnataka, reported in (2003) 4 SCC 27.

(ii)H.S.Chandra Shekara Chari Vs. Divisional, Controller, KSRTC and another, reported in (1999)4 SCC 611.

(iii)A.L.Kalra Vs. Project and Equipment Corporation of India Limited, reported in (1984) 3 SCC 316.

6.It is, therefore, requested to dismiss the present petition.

7.Heard the learned advocates for the parties.

8.It is not in dispute that the respondent was working as Assistant Cook with the petitioner – institution and her services were orally terminated from 18.01.1994. It is also not in dispute that the respondent was working as a daily wager employee and that the respondent on her own stopped working with the petitioner – institution, which had created

difficulties for the students. It is recorded by the Labour Court that before termination of the services of the respondent, the provisions of Section 25-F have not been complied with. At this stage, reference is required to be made to the provisions of Sections 2(oo) and 25(F) of the Industrial Disputes Act which provides as under :

> “Definitions – In this Act, unless there is anything repugnant in the subject or context, -
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> (oo) `retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
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> (a) voluntary retirement of the workman ; or
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> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
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> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf

contained therein ; or

© termination of the service of a workman on the ground of continued ill-health.

25-F. Conditions precedent to retrenchment of workmen – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

© notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

9.Considering the aforesaid provisions as well as considering the facts of the present case, there is a

breach of the provisions of Section 25-F of the Act and, therefore, the Labour Court has rightly come to the conclusion that there is a breach of the provisions of Section 25-F of the Act. It is also recorded by the Labour Court that the respondent has worked for more than 240 days with the petitioner. Therefore, the requirement of Section 25-F of the Act would be satisfied if a workman has worked for 240 days in a period of 12 months and it is not necessary that a workman should have been in the service of the employer for complete one year. In this view of the matter, the provisions of Section 25-F of the Act are clearly applicable and since no notice or wages in lieu of the period of notice, no any retrenchment compensation was paid to the respondent, her termination of service is invalid.

10.It is required to be noted that the payment of back wages is a discretionary element and it has to be dealt with in the facts and circumstances of each case and there cannot be any straitjacket formula. In the present case, the ends of justice would be met if the respondent is awarded 25% back wages for the intervening period considering the peculiar facts and circumstances of the case. Under the circumstances, the

impugned judgment and award of the Labour Court is required to be modified accordingly.

11.Under the circumstances, this petition is partly allowed. The judgment and award dated 20.11.1999 passed by the Labour Court, Kalol in Reference (LCK) No.26 of 1995 is modified to the extent that instead of full back wages awarded by the Labour Court, the respondent will be now paid 25% back wages for the intervening period. The petitioner is directed to reinstate the respondent in service within one month, if not reinstated so far. The respondent is further directed to pay 25% back wages as aforesaid within a period of 3 months from the date of the receipt of the writ of this order.

12.Rule is made absolute to the extent indicated hereinabove. No costs.

(SHARAD D DAVE, J)

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